

## SENATE BILL No. 243

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-8.1-10.

**Synopsis:** Failure to remit wage withholdings. Increases the penalties for failing to remit to the department of state revenue amounts withheld from employees' wages that are held in trust for the state. Requires the department of state revenue to report to various state agencies and the secretary of state that a person has failed to remit withholdings for a third time. Authorizes these state agencies and the secretary of state to treat such a person as being on a tax warrant list and to commence an administrative action to impose a penalty or revoke a license or privilege held by such a person. Authorizes the secretary of state to refuse to issue a certificate of good standing and to reject any filings for such a person.

**Effective:** July 1, 2016.

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January 7, 2016, read first time and referred to Committee on Tax & Fiscal Policy.

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Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## SENATE BILL No. 243

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 6-8.1-10-2.1, AS AMENDED BY  
2 P.L.293-2013(ts), SECTION 34, IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2.1. (a) Except as  
4 provided in IC 6-3-4-12(j) and IC 6-3-4-13(l), a person that:

- 5           (1) fails to file a return for any of the listed taxes;  
6           (2) fails to pay the full amount of tax shown on the person's return  
7           on or before the due date for the return or payment;  
8           (3) incurs, upon examination by the department, a deficiency that  
9           is due to negligence;  
10          (4) fails to timely remit any tax held in trust for the state; or  
11          (5) is required to make a payment by electronic funds transfer (as  
12          defined in IC 4-8.1-2-7), overnight courier, or personal delivery  
13          and the payment is not received by the department by the due date  
14          in funds acceptable to the department;

15 is subject to a penalty.

16          (b) Except as provided in subsection (g), the penalty described in  
17 subsection (a) is ten percent (10%) of:



(1) the full amount of the tax due if the person failed to file the return;

(2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;

(3) the amount of the tax held in trust that is not timely remitted **plus, in the case of an amount withheld from an employee's wage payment:**

**(A) forty percent (40%) for the first occurrence;**

**(B) ninety percent (90%) for the second occurrence; and**

**(C) one hundred ninety percent (190%) for the third occurrence;**

(4) the amount of deficiency as finally determined by the department; or

(5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

(c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

(f) The department shall adopt rules under IC 4-22-2 to prescribe the circumstances that constitute reasonable cause and negligence for purposes of this section.

(g) A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars



1 (\$250).

2 (h) A:

3 (1) corporation which otherwise qualifies under IC 6-3-2-2.8(2);

4 (2) partnership; or

5 (3) trust;

6 that fails to withhold and pay any amount of tax required to be withheld  
7 under IC 6-3-4-12, IC 6-3-4-13, or IC 6-3-4-15 shall pay a penalty  
8 equal to twenty percent (20%) of the amount of tax required to be  
9 withheld under IC 6-3-4-12, IC 6-3-4-13, or IC 6-3-4-15. This penalty  
10 shall be in addition to any penalty imposed by section 6 of this chapter.

11 (i) Subsections (a) through (c) do not apply to a motor carrier fuel  
12 tax return.

13 (j) If a partnership or an S corporation fails to include all  
14 nonresidential individual partners or nonresidential individual  
15 shareholders in a composite return as required by IC 6-3-4-12(h) or  
16 IC 6-3-4-13(j), a penalty of five hundred dollars (\$500) per partnership  
17 or S corporation is imposed on the partnership or S corporation.

18 **(k) In addition to the penalty set forth in subsection (b), for any**  
19 **person that fails to timely remit to the department for a third time**  
20 **any amount that is withheld from an employee's wage payment and**  
21 **held in trust for the state, the department shall report that**  
22 **information to any state agency required to check the most recent**  
23 **tax warrant list and to the secretary of state. These agencies and**  
24 **the secretary of state are authorized to:**

25 **(1) treat such a person as being on a tax warrant list; and**

26 **(2) commence an administrative action to impose a penalty or**  
27 **revoke a license or privilege held by such a person;**

28 **as permitted under the laws administered by the agency or**  
29 **secretary of state. The secretary of state is also authorized to reject**  
30 **requests for a certificate of good standing and any filings that are**  
31 **submitted by such a person.**

32 SECTION 2. IC 6-8.1-10-4, AS AMENDED BY P.L.131-2008,  
33 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
34 JULY 1, 2016]: Sec. 4. (a) If a person fails to file a return or to make  
35 a full tax payment with that return with the fraudulent intent of evading  
36 the tax, the person is subject to a penalty.

37 (b) The amount of the penalty imposed for a fraudulent failure  
38 described in subsection (a) is one hundred percent (100%) multiplied  
39 by:

40 (1) the full amount of the tax, if the person failed to file a return;

41 or

42 (2) the amount of the tax that is not paid, if the person failed to



pay the full amount of the tax.

**However, for a person described in subsection (a) that fails to timely remit to the department any amount that is withheld from an employee's wage payment and held in trust for the state, the percentage is three hundred percent (300%) instead of one hundred percent (100%).**

(c) In addition to the civil penalty imposed under this section, a person who knowingly fails to file a return with the department or fails to pay the tax due under IC 6-6-5, IC 6-6-5.1, or IC 6-6-5.5 commits a Class A misdemeanor.

(d) The penalty imposed under this section is imposed in place of and not in addition to the penalty imposed under section 2.1 of this chapter.

SECTION 3. IC 6-8.1-10-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. (a) As used in this section, "information return" means the following when a statute or rule requires the following to be filed with the department:

(1) Schedule K-1 of form IT-20S, IT-41, or IT-65.

(2) Any form, statement, or schedule required to be filed with the department with respect to an amount from which tax is required to be deducted and withheld under IC 6 or from which tax would be required to be deducted and withheld but for an exemption under IC 6.

(3) Any form, statement, or schedule required to be filed with the Internal Revenue Service under 26 CFR 301.6721-1(g) (1993).

The term does not include form IT-20FIT, IT-20S, IT-20SC, IT-41, or IT-65.

(b) If a person fails to file an information return required by the department, a penalty of ten dollars (\$10) for each failure to file a timely return, not to exceed twenty-five thousand dollars (\$25,000) in any one (1) calendar year, is imposed. **If a person fails to file an information return described in subsection (a)(2), an additional penalty of ten dollars (\$10) for each failure to file a timely return, not to exceed an additional twenty-five thousand dollars (\$25,000) in any one (1) calendar year, is imposed.**

(c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

SECTION 4. IC 6-8.1-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9. (a) As used in this section:

(1) "Dissolution" refers to dissolution of a corporation under IC 23-1-45 through IC 23-1-48, IC 23-17-23, or IC 23-17-24.



(2) "Liquidation" means the operation or act of winding up a corporation's affairs, when normal business activities have ceased, by settling its debts and realizing upon and distributing its assets.

(3) "Withdrawal" refers to the withdrawal of a foreign corporation from Indiana under IC 23-1-50 or IC 23-17-26.

(b) The officers and directors of a corporation effecting dissolution, liquidation, or withdrawal shall do the following:

(1) File all necessary tax returns in a timely manner as required by this title.

(2) Make all tax payments due or determined due to the department or a county treasurer in a timely manner as required by this title.

(3) File with the department a form of notification within thirty (30) days of the issuance of a certificate of dissolution, decree of dissolution, the adoption of a resolution or plan, or the filing of a statement of withdrawal. The form of notification shall be prescribed by the department and may require information concerning:

(A) the corporation's assets;

(B) the corporation's liabilities;

(C) details of the plan or resolution;

(D) the names and addresses of corporate officers, directors, and shareholders;

(E) a copy of the minutes of the shareholders' meeting at which the plan or resolution was formally adopted; and

(F) such other information as the department may require.

The department may accept, in lieu of its own form of notification, a copy of Form 966 that the corporation filed with the Internal Revenue Service.

(c) Unless a clearance is issued under subsection (g), for a period of one (1) year following the filing of the form of notification with the department, or the filing of all necessary tax returns as required by this title, including the final tax return, whichever is later, the corporate officers and directors remain personally liable, subject to IC 23-1-35-1(e) or IC 23-17, for any acts or omissions that result in the distribution of corporate assets in violation of the interests of the state or a political subdivision (as defined in IC 36-1-2-13). An officer or director held liable for an unlawful distribution under this subsection is entitled to contribution:

(1) from every other director who voted for or assented to the distribution, subject to IC 23-1-35-1(e) or IC 23-17; and

(2) from each shareholder for the amount the shareholder



1           accepted.

2           (d) The corporation's officers' and directors' personal liability  
3 includes all taxes, penalties, interest, and fees associated with the  
4 collection of the liability due the department or the county. In addition  
5 to the penalties provided elsewhere in this title, a penalty of up to thirty  
6 percent (30%) of the unpaid tax, **or sixty percent (60%) in the case**  
7 **of any employee wage withholding held in trust for the state**, may  
8 be imposed on the corporate officers and directors for failure to take  
9 reasonable steps to set aside corporate assets to meet the liability due  
10 the department or the county.

11          (e) If the department or the county treasurer fails to begin a  
12 collection action against a corporate officer or director within the  
13 period prescribed by subsection (c), the personal liability of the  
14 corporate officer or director expires. The filing of a substantially blank  
15 form of notification or a form containing misrepresentation of material  
16 facts does not constitute filing a form of notification for the purpose of  
17 determining the period of personal liability of the officers and directors  
18 of the corporation.

19          (f) In addition to the remedies contained in this section, the  
20 department or county treasurer is entitled to pursue corporate assets  
21 that have been distributed to shareholders in violation of the interests  
22 of the state or political subdivision. The election to pursue one (1)  
23 remedy does not foreclose the state's or the county's option to pursue  
24 other legal remedies.

25          (g) The department may issue a clearance to a corporation effecting  
26 dissolution, liquidation, or withdrawal if:

- 27           (1) the officers and directors of the corporation have met the
- 28           requirements of subsections (b) through (c); and
- 29           (2) request for the clearance is made in writing by the officers and
- 30           directors of the corporation within thirty (30) days after the filing
- 31           of the form of notification with the department.

32          (h) The issuance of a clearance by the department under subsection  
33 (g) releases the officers and directors from personal liability under this  
34 section.

35          (i) This section does not limit the liability of a responsible corporate  
36 officer for withheld income taxes or collected gross retail taxes.

